

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**WILLIAM NELSON, III**

**PLAINTIFF**

**v.**

**No. 3:18CV189-GHD-JMV**

**WARDEN LEPHER JENKINS  
MR. DEAN, CHIEF OF SECURITY  
SGT. TONYA BOYD, DISCIPLINARY HEARING OFFICER  
CORRECTIONS OFFICER N. MARION  
MS. DAVENPORT, DISCIPLINARY INVESTIGATOR  
HAROLD TATUM**

**DEFENDANTS**

**ORDER DENYING PLAINTIFF'S MOTION  
TO ALTER OR AMEND JUDGMENT**

This matter comes before the court on the plaintiff's motion for reconsideration of the court's order adopting the Magistrate Judge's Report and Recommendation that defendants Jenkins, Dean, Davenport, Boyd, and Tatum be dismissed from this case – and that the plaintiff's claims against C.O. Marion will proceed. The plaintiff states that he did not receive a copy of the Magistrate Judge's Report and Recommendation until the day the court adopted it. Thus, he had no opportunity to raise his objections. The court received Mr. Nelson's objections 13 days after adopting the Report and Recommendation and thus did not consider them in making its decision. As discussed below, the objections are without merit.

The court interprets the motion, using the liberal standard for *pro se* litigants set forth in *Haines v. Kerner*, 404 U.S. 519 (1972), as a motion to amend judgment under Fed. R. Civ. P. 59(e), which must be filed within 28 days of entry of judgment. An order granting relief under Rule 59(e) is appropriate when: (1) there has been an intervening change in the controlling law, (2) where the movant presents newly discovered evidence that was previously unavailable, or (3) to correct a manifest error of law or fact. *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563,

567 (5<sup>th</sup> Cir. 2003).

The plaintiff does not object to the dismissal of defendants Jenkins and Dean because they participated in the events at issue only as supervisors. He argues, however, that the defendants Davenport, Boyd, and Tatum's participation in the disciplinary process violated his right to due process. As set forth in the Magistrate Judge's Report and Recommendation, however, the punishment he received – placement in restrictive custody for a year – did not rise to the level sufficient to trigger due process protections. As such, his objections are without merit and are overruled. The court would have dismissed Davenport, Boyd, and Tatum even if the plaintiff's objections had been timely. The plaintiff has neither asserted nor proven any of the justifications to amend a judgment under Fed. R. Civ. P. 59(e). As such, the plaintiff's request to alter or amend judgment is **DENIED**.

SO ORDERED, this, the 22<sup>nd</sup> day of July, 2019.

  
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SENIOR JUDGE